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In the

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

## No. 658

MAURICE B. BALDWIN and LARISSA M. BALDWIN,
*Petitioners,*

VERSUS

THE BOARD OF TAX-ROLL CORRECTIONS OF OKLAHOMA COUNTY and W. T. BILL HALE, County Treasurer of Oklahoma County,
*Respondents.*

**Certiorari to the Supreme Court of Oklahoma**

## BRIEF OF RESPONDENTS IN OPPOSITION

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February, 1959.

UTTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. FO 5-8750

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## BRIEF OF RESPONDENTS IN OPPOSITION

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### JURISDICTION

Respondents say that the petition for certiorari filed herein fails to show that this Honorable Court has jurisdiction to grant the relief prayed. The requirements of Title 28, U.S.C.A., Sec. 1257(3), to give this Honorable Court jurisdiction in certiorari are not met. No substantial Federal question is presented.

## STATEMENT

Section 3 of the Oklahoma Enabling Act, Act of Congress, June 16, 1906, Chapter 3335 (34 Stat. 269) is correctly quoted on page 6 of the petition for certiorari and it is true, as stated, that the Oklahoma Constitution, Article 1, Section 3, is a copy verbatim of said Section 3 except that the word "proposed" preceding the word "state" is dropped. The petitioners are owners, in fee simple, of the involved land in Oklahoma County with a building thereon. It had been regularly subject to taxation. On March 16, 1953, petitioners entered into a written lease of the building alone with the United States Postmaster General for a term of 15 years at an annual rental of $18,362.00. The building was to be used by the Government for postal purposes. The lease specifically provided that "the lessor shall pay all taxes and water rates * * *."

The taxation authorities of Oklahoma County assessed the property for ad valorem taxes in the names of the owners. The tax was non-discriminatory. It is not contended that it was other than an equal assessment compared with other similar property in Oklahoma County.

There has been no tax levied upon the leasehold or any other interest of the Government in the involved property.

## ARGUMENT

Petitioners state that statutory jurisdiction and grounds for review are conferred by 28 U.S.C.A., Sec. 1257(3).

Petitioners allege a right or privilege of exemption claimed under a statute of the United States, the Okla-

homa Enabling Act. On its face, therefore, the petition would seem to be sufficient to sustain a grant of certiorari.

But immediately, petitioners cite and place sole reliance upon the Act of Congress, the Oklahoma Enabling Act, Section 3, which does not grant an exemption to the petitioners. The only exemption from taxation granted therein is to the United States and the United States is not claiming an exemption. It is not a party here.

The exemption granted is to the United States only. It is not transferable. It is not to be used for the special protection or profit of a private citizen.

In *Ken Realty Company, Inc.* v. *Johnson, Treasurer*, 138 F.2d 809, the United States Government sold an abandoned Post Office building and grounds to plaintiff, the consideration being payable in 10 equal installments. The purchaser took possession and the agreement provided that purchaser might sell parts of the property and leases might be made without Government approval. The Government retained title to the property and a deed was to be given when the purchase price was paid. Plaintiff claimed the property was exempt.

> *Held*: "Mutual immunity from taxation accorded to State and Federal Governments under Federal Constitution must be given a practical application so as to attain its purpose, but without unnecessary interference with the right of taxation, and it is personal to the Government and is not transferable to, or to be used for special protection of a citizen."

Under this rule of law, neither the Oklahoma Enabling Act nor Article 1, Section 3, of the Oklahoma Constitution,

relied upon by the petitioners, has any application in the instant case, and jurisdiction fails for want of a Federal question.

The difficulty of petitioners' petition is that they are claiming the benefits of an exemption, as private citizens, when the private citizen is not given an exemption under the Act of Congress.

It is claimed that the property is exempt because it is being used by the Government. But "use" alone is not the test of the terminal clause of the Act. There must be a "reservation" by the Government for its (the Government's) use. This involved property has not been reserved by the Government. Its right of use was acquired under the lease.

Mere use by the Government or even its agencies will not free the property from taxation. In *Taber* v. *Indian Territory Illuminating Oil Company*, 300 U.S. 1, 81 L. Ed. 463, it was contended that certain property used by the lessee of the Indian land in the development of oil on the Indian lands was exempt. But this Honorable Court held that exemption did not lie and reversed the case. It was held that a non-discriminating tax upon property of an agent of the Government imposed no direct burden on the exertion of governmental powers.[1]

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[1] "If the federal government owned the agency and controlled the agent and owned the property to be used in executing the agency, we would have a state of facts applicable to the proposition stated by the plaintiff, but the facts of the case we are considering are similar to a national bank as a federal agency. The charter and specie are not subject to be taxed under state law, but the building and ground owned by the bank and used in operating its business are not a part of the agency exempt from taxation. The same is true as to the post office agency,

Since the adoption of the Oklahoma Constitution in 1907, and the acceptance of the Act of Congress, many cases have arisen illustrative of what is meant by "reserved for its use."

In *New Brunswick* v. *United States*, 276 U.S. 555, 72 L. Ed. 693, the United States in 1918 purchased lands in New Jersey for the purpose of providing housing for its employees. Thereafter, in winding up the affairs of the Housing Corporation, the Government sold the lands under contract wherein the United States retained the legal title to the property as security for the payment of balances due on the purchase price. New Brunswick assessed the properties for taxes after such contract for sale but before delivery of deeds. The validity of such taxes was the question presented.

This Court upheld the taxation authorities so long as the interests of the Government were protected. The reservation of title as security presents a clear instance of what is meant by "reserved for its use."

Another such case is *S.R.A., Inc.* v. *State of Minnesota*, 327 U.S. 558, 90 L. Ed. 851.[2]

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[1] (Continued)
where the government furnishes the agent and private persons furnish the house and grounds where the agency functions. The house and grounds would not be a part of the agency exempt from taxation. The source of the agency being in the federal government does not force the conclusion that the means by which the agency is exercised is a part of the same, and, therefore, not subject to state authority for taxation." *Taber* v. *Indian Territory Illuminating Oil Co., supra.*

[2] "An executory contract for the sale of lands by the United States to a private purchaser under which the purchaser is given possession and is to receive the legal title upon payment of the purchase price operates to subject the lands to the tax laws of the State." *S.R.A., Inc.* v. *Minnesota, supra.*

Petitioners' third proposition is without merit. Therein they assert that the owner of lands is entitled to receive the benefit of an exemption of his property as "an incident of his ownership of the property."

That question was not even presented to the Supreme Court of Oklahoma and that Court made no decision thereon. It presents no federal question.

The cases cited by petitioners' third proposition are inapplicable. All three deal with Indians who received allotments under Indian treaties and Acts of Congress and their exemptions were upheld by the Supreme Court of Oklahoma. Petitioners are white people who entered into a commercial lease of their property to the Government for profit.

The petitioner urges that if the tax be upheld the United States will be the ultimate taxpayer since the owner will endeavor to fix the rental in an amount sufficient to pay the taxes in addition to a fair consideration for the lease. This contention is answered in *State of Alabama* v. *King and Boozer*, 314 U.S. 1, 86 L. Ed. 3, 62 Sup. Ct. 43, where this Court held that the Constitution, unaided by congressional legislation does not prohibit non-discriminatory state taxation merely because the burden is passed on economically as a part of the cost.

To the same effect is *Heiner* v. *The Colonial Trust Company*, 275 U.S. 232, 72 L. Ed. 256, where the Court said that tax exemptions are never lightly to be inferred and any implication of an exemption of the income of Indians, if made, must rest on too narrow a basis to justify the in-

clusion of income to other persons, merely because the statute if applied, as written, may have some perceptible economic effect on the Indians.

## THE DECISION BELOW WAS CORRECT

The involved property has not been "reserved" by the Government for its "use."

Permission to use as a post office has been obtained under a commercial lease, for profit, to the owner.

You "reserve" from that which you have. You do not "reserve" by acquisition from that which another person has. You acquire or obtain or purchase from such person; you do not "reserve."[3]

The mere fact that property is used by the United States as an instrument for effecting its purpose[4] does not relieve such property from state taxation, at least where the local tax presents no obstacle to the execution of the national policy.[5]

Of all the cases cited by the parties in the Supreme Court of Oklahoma, the case most nearly in point factually was *Spohn* v. *Stark*, 150 N.E. 787 (Ind.). The factual setup in the *Spohn* case bears great similarity to the instant case, the chief distinction being as to the identity of the sovereign

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[3] *Myers* v. *Conway*, 7 So. 639 (Ala.); *Gerlach Livestock Corp.* v. *United States*, 76 F. Supp. 87 at page 93; *United States* v. *Celestine*, 215 U.S. 278, 30 Sup. Ct. 93, 54 L. Ed. 195 at page 197.

[4] *Choctaw O.N.G. Railway Co.* v. *Mackay*, 256 U.S. 531, 41 Sup. Ct. 582, 65 L. Ed. 1076.

[5] *Federal Compress & Warehouse Co.* v. *McLean*, 291 U.S. 17, 54 Sup. Ct. 267, 78 L. Ed. 622.

lessee; state in one, Federal in the other. Statutory and constitutional provisions of Indiana and Oklahoma were similar. It was held that lessor's property, leased for a profit to the state, to be used exclusively for governmental purposes, was not exempt merely because the lessee devoted the property to purposes or use which would be exempt under the constitutional provisions if so used by the owner. Held that to allow an exemption here would be an "exemption for private gain and a perversion of the enlightened purposes had in view by the framers of the Constitution."

The Oklahoma Supreme Court decided that the phrase "reserved for its use" was not susceptible to the interpretation sought by the petitioners. Under Section 3 of the Enabling Act, we see that no exemption is given to the petitioners as owners. Exemptions are not lightly to be inferred. The Oklahoma Supreme Court was right when it held that the petitioners' property was not exempt.

## PETITIONERS' CLAIM OF EXEMPTION IS FRIVOLOUS

It appears from the face of petition for certiorari that Petitioner Baldwin is claiming exemption from a nondiscriminatory tax on his own property because under the Federal Statute, the United States is granted an exemption on its property, and that the United States is using the property of the petitioner under a lease.

No exemption is granted the petitioner under the Federal or state statutes. No Federal question is presented. The United States claims no exemption.

A Federal question which rests upon an obviously false assumption is so plainly devoid of merit as to afford no basis for the exercise by this Court of its appellate jurisdiction over a state court. *Parker* v. *McClain*, 237 U.S. 269, 59 L. Ed. 1051, 35 Sup. Ct. 632.

For the foregoing reasons, it is submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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February, 1959.